

Legislative Advocacy Proposal

Offered at

The Legislative Review Committee on Trafficking

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Dominique Roe-Sepowitz, MSW, PhD, Arizona State University
Kristine Hickle, MSW, Doctoral Candidate, Arizona State University
Lt. James Gallagher, MAdmin, Phoenix Police Department

Summary of Proposal

1. Statutory Inconsistencies

Address gaps in existing state laws that differentiate victimization based upon biological age under the age of consent as a legal barometer to evaluate degree of victimization. Developmental impacts related to sex trafficking must be considered when considering the true age (actual and emotional) of the victim and the state's responsibility to respond with respect to the actual age/victimization relationship.

2. Safe Harbor Law

Evaluate inconsistencies between federal TVPA (a person under 18 who is induced to perform a commercial sex act is a victim of *a severe form of trafficking* [22 U.S.C. 7102](#)) and state prostitution laws that prevents minors from being prosecuted for prostitution when the combination of their age and victimization can be used as a prohibitive defense against criminal prosecution.

3. 4th Arrest Felony

Consider the level of victimization inherent in prostitution and the degree of choice (to the extent it exists) available to the victim. Mitigating factors must also be considered when evaluating the level of criminal responsibility a victim may have regarding prostitution related activities

4. Vacate Convictions Related to Victimization

Explore judicial review process that allows for expunging low level offenses from the victim's criminal record that were committed in furtherance of or as result of their victimization through engaging in prostitution related activities.

5. Public Health Issues

Create a requirement for STI and/or HIV testing for Traffickers, Johns/Customers and Victims of Sex Trafficking as a condition of case resolution with a provision to offer this service to juvenile victims of domestic minor sex trafficking as a means to promote victim health and safety and to assist in arresting the spread of communicable diseases.

6. DNA Collection & Retention

Explore the value and legality of collecting and retaining the DNA of persons arrested for a sex trafficking related offense (both Trafficker & Customer) as a way to allow police to properly investigate incidents of sexual violence committed against trafficking victims as well as provide additional evidence that may help to solve other, serious crimes in the future.

Priorities:

1. **Statutory Inconsistency in application of Victim's Age relative to Offender Knowledge/Offense**

At present there exists a gap in the law that differentiates the victimization between a victim who is 15 years to 17 years 363 days old and a victim who is under the age of 15. Biological age under the age of consent cannot be used as a legal barometer to evaluate degree of victimization. Modifying existing laws to close these gaps will correct inconsistencies while enhancing suspect investigation, prosecution and accountability, victim advocacy and recovery potential

Not unlike research into the psychological effects of addiction, emotional development is impaired and in some cases stopped at the time the victim becomes trafficked and experiences the myriad effects of commercial sexual exploitation resulting in physical/mental/emotional abuse and/or substance abuse. Developmental impacts related to sex trafficking must be considered when considering the true age (actual and emotional) of the victim and the state's responsibility to respond with respect to the actual age/victimization relationship.

The highlighted language listed below would benefit from additional review and legislative attention:

ARS 13-3212 Child Prostitution defines (in part) the offense as follows:

A. A person commits child prostitution by knowingly:

1. Causing any minor to engage in prostitution.
2. Using any minor for the purposes of prostitution.
3. Permitting a minor who is under the person's custody or control to engage in prostitution.
4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.
5. Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.
6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor.
7. Transporting or financing the transportation of any minor with the intent that the minor engage in prostitution.

B. A person who is at least eighteen years of age commits child prostitution by knowingly:

1. Engaging in prostitution with a minor who is under fifteen years of age.

2. Engaging in prostitution with a minor **who the person knows** is fifteen, sixteen or seventeen years of age. (This could be improved by changing Knowingly to Recklessly to illustrate the suspect *knew or had reason to know* the victim was a juvenile)
3. Engaging in prostitution with a minor who is fifteen, sixteen or seventeen years of age.

C. It is not a defense to a prosecution under subsection A and subsection B, paragraphs 1 and 2 of this section that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor. (Allows for Innovation in enforcement/investigative efforts)

D. Notwithstanding any other law, a sentence imposed on a person for a violation of subsection A or subsection B, paragraph 2 of this section involving a minor who is fifteen, sixteen or seventeen years of age shall be consecutive to any other sentence imposed on the person at any time.

E. Child prostitution pursuant to subsection A of this section is a class 2 felony if the minor is under fifteen years of age and is punishable pursuant to section 13-705.

F. Child prostitution pursuant to subsection B, paragraph 1 of this section is a class 2 felony and is punishable pursuant to section 13-705.

G. If the minor is fifteen, sixteen or seventeen years of age, child prostitution pursuant to subsection A and subsection B, paragraph 2 of this section is a class 2 felony, the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. The terms are as follows:

H. Child prostitution pursuant to subsection B, paragraph 3 of this section is a class 6 felony. If the court sentences the person to a term of probation, the court shall order that as an initial term of probation the person be imprisoned in the county jail for not less than one hundred eighty consecutive days. This jail term shall commence on the date of sentencing. The court may suspend ninety days of the jail sentence if the person has not previously been convicted of a violation of this section, a violation of section 13-3214 or a violation of any city or town ordinance that prohibits prostitution and that has the same or substantially similar elements as section 13-3214 and the person successfully completes an appropriate court ordered education or treatment program. (Condition based penalties create the potential to evaluate victimization by degrees instead of evenly applying the law to all victims in all circumstances)

2. **Safe Harbor Law**

- A. Prevents minors from being prosecuted for prostitution when the combination of their age and victimization can be used as a prohibitive defense against criminal prosecution.
- B. Ensures that the courts do not have to prove ‘coercion’ to prosecute pimps and johns for minors. (It is PPD experience that this is essentially true at MCAO and USAO)
- C. Provides specialized services for sex trafficked minors (safe and long-term housing, mental health services, access to education, and life skills).
- D. Deconflicts inconsistencies between federal TVPA (a person under 18 who is induced to perform a commercial sex act is a victim of *a severe form of trafficking* [22 U.S.C. 7102](#)) and state prostitution laws.

Resources to explore:

1. http://www.polarisproject.org/storage/documents/policy_documents/Issue_Briefs/issue%20brief%20-%20safe%20harbor%20-%20april%202012.pdf
2. (<http://ecpatusa.org/what-we-do/helping-children-in-america/law-project/>)

Safe Harbor legislation can:

- A. Correct the conflicts between federal and state law by exempting children from prosecution for prostitution;
 - B. Require training for law enforcement and other first responders on how to identify and assist victims;
 - C. Increase the penalties for traffickers and buyers; and
 - D. Prompt the collaboration of a multidisciplinary team to develop a statewide system of care.
3. **Remove the "4th arrest is a felony"** punishment for prostituted adults. Instead, change the statutory language to read “for the third or any subsequent offense...”
- A. Consideration must be given to the level of victimization inherent in prostitution and the degree of choice (to the extent it exists) available to the victim.
 - B. Mitigating factors must also be considered when evaluating the level of criminal responsibility a victim may have regarding prostitution related activities.
1. Mitigating factors can include:

- a. Trafficked by a Pimp
- b. Economic or Survival needs
- c. Mental health issues
- d. Residential issues
- e. History of physical/emotional/sexual abuse

4. **Vacate Conviction Related to Victimization**

A. An Illinois Model should be considered that allows for expunging low level offenses from the victim's criminal record that were committed in furtherance of or as result of their engaging in prostitution related activities.

1. These can include:

- a. Prostitution
- b. Manifesting
- c. Public Sexual Indecency
- d. Trespassing

B. Allowing sex trafficking victims (over the age of 18) to vacate prostitution convictions from their criminal records through proving that they were sexually trafficked.

Legislative Examples

Hawaii: http://www.capitol.hawaii.gov/session2012/bills/SB2576_CD1_.pdf

Maryland: http://mlis.state.md.us/2011rs/fnotes/bil_0006/hb0266.pdf

Illinois: <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=072500050K116-2.1>
<http://www.enddemandillinois.org/sites/default/files/IL%20Justice%20for%20Victims%20of%20Sex%20Trafficking%20Act%20Bill%20Summary%20August%208%202011.pdf>

Nevada: http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB6_EN.pdf

New York (discussion points for this law:

<http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf>)

4. **Public health related issues** - Create a requirement for STI and/or HIV testing for Johns, pimps and arrested adults as a condition of case resolution with a provision to offer this service to juvenile victims of domestic minor sex trafficking.

A. In Georgia it is a requirement for customers/johns and pimps "submit to testing for HIV within 45 days following the date of the verdict or plea. Consideration given to release the test results to the defendant's spouse (if married)."

- B. In New Mexico it is a requirement for prostituted adults to receive a medical examination and treatment.

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- C. In Tennessee Aggravated Prostitution is defined as “a person commits aggravated prostitution when, knowing that such person is infected with HIV, the person engages in sexual activity as a business or is an inmate in a house of prostitution or loiters in a public place for the purpose of being hired to engage in sexual activity...”
- D. In Pennsylvania, both prostituted adults and patrons are charged with a felony if they are HIV positive. “Felony of the third degree if the person who committed the offense knew that he or she was human immunodeficiency virus (HIV) positive or manifesting acquired immune deficiency syndrome (AIDS)”.

(C & D Criminal Transmission of an Infectious Disease)

- E. Arizona application: Propose health check from AZ Health Department as part of Misdemeanor plea for Customers and ‘prostitutes’.

5. Retrieve DNA from Customers of Sex Trafficking Victims/Prostituted adults

- A. Research has consistently shown that most of the violence against victims of sex trafficking is perpetrated by the ‘customers’ or ‘johns.’ Having the DNA of all arrested ‘customers’ would allow police to properly investigate incidents of sexual violence committed against trafficking victims as well as provide additional evidence that may help to solve other, serious crimes in the future.
- B. Currently in Phoenix, AZ, if a person is arrested for solicitation of a prostitute, they are charged under Phoenix City Code, which offers the option a plea agreement allowing them the opportunity to attend the John School and have the charge removed from their record. The use of the Phoenix City Code at present does not charge the person with an offense that requires DNA retrieval when they arrive at the jail.
- C. Recommendation: pursue the collection of DNA from all ‘customers’ to add to the State of Arizona Crime Lab at the cost of the offender.